

AIRCRAFT CERTIFICATION REFORM AND  
ACCOUNTABILITY ACT

NOVEMBER 16, 2020.—Committed to the Committee of the Whole House on the  
State of the Union and ordered to be printed

Mr. DEFazio, from the Committee on Transportation and  
Infrastructure, submitted the following

R E P O R T

[To accompany H.R. 8408]

The Committee on Transportation and Infrastructure, to whom  
was referred the bill (H.R. 8408) to direct the Administrator of the  
Federal Aviation Administration to require certain safety stand-  
ards relating to aircraft, and for other purposes, having considered  
the same, reports favorably thereon without amendment and rec-  
ommends that the bill do pass.

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PURPOSE OF LEGISLATION

The purpose of H.R. 8408, the “Aircraft Certification Reform and  
Accountability Act,” is to improve aviation safety by reforming the

Federal Aviation Administration (FAA) aircraft certification process; ensure that the FAA and aircraft manufacturers develop and maintain robust safety cultures; establish enhanced safety requirements related to the design of new aircraft, engines, propellers, and appliances, as well as enhanced requirements for the FAA's processes for certifying new designs as safe; and understand and address issues identified related to international pilot training, human factors, and automation in the cockpit.

#### BACKGROUND AND NEED FOR LEGISLATION

Two crashes involving Boeing 737 MAX airplanes within five months of each other—Lion Air flight 610 in October 2018 and Ethiopian Airlines flight 302 in March 2019—led to the combined deaths of 346 people, including eight Americans, and resulted in the longest worldwide grounding of a transport-category airplane in civil aviation history. The investigations and inquiries responding to the accidents revealed issues with the design and development of the 737 MAX. One issue was with a new software system in the airplane's flight control computer called the maneuvering characteristics augmentation system (MCAS), whose erroneous activation applied nose-down control forces without pilot input, creating conditions to which the pilots in both accidents were unable to appropriately respond. In addition, these investigations and inquiries revealed issues with the FAA's processes for certifying new aircraft designs and the FAA's oversight of the agency's organization designation authorization (ODA) program—the means by which the FAA grants designee authority to companies to conduct certain functions on behalf of the agency, including approving aircraft design changes. Finally, the expert reviews and investigations also raised questions about pilot training programs, human factors, and automation in the cockpit. Combined, these issues, as well as other factors—revealed in reports issued by the National Transportation Safety Board (NTSB), the Joint Authorities Technical Review (JATR), the Inspector General of the U.S. Department of Transportation (DOT IG), the Safety Oversight and Certification Advisory Committee, and others—contributed to the two 737 MAX accidents.

The Committee, under the leadership of Chair Peter DeFazio and Subcommittee on Aviation Chair Rick Larsen, conducted an 18-month investigation into the design, development, and certification of the 737 MAX airplane, and related matters, that contributed to the Lion Air flight 610 and Ethiopian Airlines flight 302 accidents. Throughout the course of the investigation, the Committee held five hearings on issues related to the 737 MAX program; the two Chairs wrote 23 oversight letters, including 12 records request letters; the Committee received an estimated 600,000 pages of records from The Boeing Company, the FAA, airlines, and others; and conducted two dozen official interviews with current Boeing and FAA employees and others. Democratic Committee staff also spoke with a wide range of aviation safety experts, engineers, software developers, and former Boeing and FAA employees. In addition, Democratic Committee staff were informed by records and information provided by numerous whistleblowers who contacted the Committee directly with their concerns. The investigation concluded with a final report produced by Democratic staff of the Committee and issued on September 15, 2020, which contained investigative

themes, findings, and observations regarding deficiencies in the processes under which Boeing designed the 737 MAX as well as lapses in FAA oversight that informed the development of H.R. 8408 for the Democratic Members of the Committee.

The Committee also received reports and testimony from various experts, including expert panels, boards, and committees, tasked with reviewing the two accidents as well as the design, certification, manufacturing, and operation of the Boeing 737 MAX. These expert reviews included those conducted by the NTSB, the JATR, the DOT IG, the Safety Oversight and Certification Advisory Committee, the Secretary of Transportation's Special Committee to Review the FAA's Aircraft Certification Process, the Technical Advisory Board, and others. These expert reviews informed the development of H.R. 8408 for the Republican Members of the Committee.

#### HEARINGS

For the purposes of section 103(i) of H. Res. 6 of the 116th Congress—

(1) The following hearing was used to develop or consider H.R. 8408:

On December 11, 2019, the Committee held a hearing titled “The Boeing 737 MAX: Examining the Federal Aviation Administration’s Oversight of the Aircraft’s Certification.” The Committee received testimony from, on the first panel, Hon. Stephen M. Dickson, Administrator, *accompanied by Mr. Earl Lawrence, Executive Director, Aircraft Certification Service*, both of the FAA, and Mr. Matthew Kiefer, Member, Technical Advisory Board; and on the second panel, Mr. Edward F. Pierson, retired Boeing employee; Mr. G. Michael Collins, retired FAA employee; Mica R. Endsley, PhD, President, SA Technologies, testifying on behalf of the Human Factors and Ergonomics Society; and Mr. John Cox, President and Chief Executive Officer, Safety Operating Systems.

(2) The following related hearings were held:

On May 15, 2019, the Subcommittee on Aviation held a hearing titled “Status of the Boeing 737 MAX.” The Subcommittee received testimony from Mr. Daniel K. Elwell, Acting Administrator, *accompanied by Mr. Earl Lawrence, Executive Director, Aircraft Certification*, both of the FAA; and Hon. Robert L. Sumwalt, III, Chair, *accompanied by Ms. Dana Schulze, Deputy Director*, both of the NTSB.

On June 19, 2019, the Subcommittee on Aviation held a hearing titled “Status of the Boeing 737 MAX: Stakeholder Perspectives.” The Subcommittee received testimony from Ms. Sharon Pinkerton, Senior Vice President, Legislative and Regulatory Policy, Airlines for America; Mr. Daniel Carey, President, Allied Pilots Association; Chesley Sullenberger, Pilot, US Airways (Retired); Ms. Sara Nelson, International President, Association of Flight Attendants-CWA; and Hon. J. Randolph “Randy” Babbitt, Former Administrator, FAA.

On July 17, 2019, the Subcommittee on Aviation held a hearing titled “State of Aviation Safety.” The Subcommittee received testimony from, on the first panel, Mr. Paul Njoroge, husband of Carolyn Karanja, father of Ryan Njuguna, Kelli Pauls, Rubi Pauls, and son-in-law of Anne Karanja, Victims of Flight ET302,

testifying on behalf of the Families of Ethiopian Airlines Flight 302, *accompanied by Mr. Michael Stumo, father of Samya Stumo, victim of ET302*; and on the second panel, Ms. Dana Schulze, Acting Director, Office of Aviation Safety, NTSB; Mr. Joseph G. DePete, President, Air Line Pilots Association, International; Ms. Lori Bassani, National President, The Association of Professional Flight Attendants; Mr. Michael Perrone, National President, Professional Aviation Safety Specialists; and Mr. John Samuelsen, International President, Transport Workers Union.

On October 30, 2019, the Committee held a hearing titled “The Boeing 737 MAX: Examining the Design, Development, and Marketing of the Aircraft.” The Committee received testimony from Mr. Dennis A. Muilenburg, President and Chief Executive Officer; and Mr. John Hamilton, Vice President and Chief Engineer, Boeing Commercial Airplanes, both from The Boeing Company.

#### LEGISLATIVE HISTORY AND CONSIDERATION

H.R. 8408 was introduced in the House on September 29, 2020, by Mr. DeFazio of Oregon, Mr. Graves of Missouri, Mr. Larsen of Washington, and Mr. Graves of Louisiana, and referred to the Committee on Transportation and Infrastructure. Within the Committee, H.R. 8408 was referred to the Subcommittee on Aviation.

On September 30, 2020, the Subcommittee on Aviation was discharged from further consideration of H.R. 8408.

The Committee met in open session to consider H.R. 8408 on September 30, 2020, and ordered the measure to be reported to the House with a favorable recommendation, without amendment, by voice vote.

#### COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires each committee report to include the total number of votes cast for and against on each record vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against.

There were no recorded votes taken in connection with consideration of H.R. 8408.

#### COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee’s oversight findings and recommendations are reflected in this report.

#### NEW BUDGET AUTHORITY AND TAX EXPENDITURES

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received a cost estimate for this bill from the Director of Congressional Budget Office. The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill

contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. The Chairman of the Committee shall cause such estimate and statement to be printed in the *Congressional Record* upon its receipt by the Committee.

#### CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, a cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the *Congressional Record* upon its receipt by the Committee.

#### PERFORMANCE GOALS AND OBJECTIVES

With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goal and objective of this legislation is to improve the FAA's certification process for new aircraft, engines, and other components; to provide the agency with sufficient resources and technical expertise to perform its certification functions; to ensure robust FAA oversight of U.S. aircraft manufacturers; to maintain the safety of U.S. manufactured aircraft and global air travel which relies on such aircraft; and to further understand and address issues identified by experts related to international pilot training, human factors, and automation in the cockpit.

#### DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee finds that no provision of H.R. 8408 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

#### CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with clause 9 of rule XXI of the Rules of the House of Representatives, this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of the rule XXI.

#### FEDERAL MANDATES STATEMENT

An estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the *Congressional Record* upon its receipt by the Committee.

#### PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt state, local, or tribal law. The Committee finds that H.R. 8408 does not preempt any state, local, or tribal law.

#### ADVISORY COMMITTEE STATEMENT

Section 20 directs the FAA to initiate an expert safety review as well as a call to action safety review. The Committee finds that the FAA can carry out the functions of these review panels by utilizing either an aviation rulemaking committee or an advisory committee already in existence, or by enlarging the mandate of an existing advisory committee.

#### APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (Public Law 104–1).

#### SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

##### *Section 1. Short title; Table of contents*

This section provides that this bill may be cited as the “Aircraft Certification Reform and Accountability Act” and sets the table of contents for this measure.

##### *Sec. 2. Safety management systems*

This section requires the FAA to issue regulations for holders of both a type certificate and a production certificate, such as aircraft and other aerospace industry manufacturers, to adopt safety management systems (SMS) consistent with international standards and practices. An SMS adopted under this section must contain a confidential employee reporting system that includes non-punitive provisions through which employees can report hazards and safety concerns, as well as a code of ethics emphasizing safety as the highest priority for a manufacturer’s officers and employees. This section also directs that the required confidential employee reporting system be implemented in a manner consistent with other voluntary reporting programs administered by the FAA Administrator.

##### *Sec. 3. Expert review of organization designation authorizations for transport airplanes*

This section convenes an independent expert review panel—comprised of representatives of the FAA, National Aeronautics and Space Administration, U.S. airlines, manufacturers of aircraft and aircraft components, labor unions representing airline pilots, production employees, and FAA engineers and safety inspectors, other ODA holders, and other independent subject-matter experts—to review The Boeing Company’s ODA, safety culture, and capability to perform FAA-delegated functions. This section directs the panel to

make recommendations on any deficiencies found during the review.

This section also authorizes the FAA Administrator to limit, suspend, or terminate Boeing’s ODA if the Administrator deems it necessary based on the review panel’s findings and requires the FAA Administrator to report to Congress on the status of procedures under which the agency will conduct focused oversight of Boeing’s processes for performing FAA-delegated functions.

#### *Sec. 4. Certification oversight staff*

This section authorizes \$27,000,000 for each of fiscal years 2021 through 2023 in new appropriations for the FAA to recruit and retain engineers, safety inspectors, human factors specialists, software and cybersecurity experts, and other qualified technical experts who perform duties related to the certification of aircraft, engines, and other components. This section clarifies that nothing in this section vests in any exclusive bargaining representative any management right of the FAA Administrator, and any action taken under this section is subject to the availability of appropriations.

#### *Sec. 5. Disclosure of safety-critical information*

This section requires manufacturers to disclose to the FAA certain safety-critical information related to an aircraft, including information regarding systems that manipulate flight controls without direct pilot input or commands, correct adverse handling qualities, or compensate for unstable aerodynamic properties, as well as other systems whose failure or erroneous activation would present a risk rated hazardous or catastrophic. This section requires that any aircraft flight manual and flight crew operating manual contain a description of such a system and flight crew procedures for responding to a failure or aberrant operation of such system. This section imposes up to a \$1 million civil penalty for a violation of the disclosure requirements and directs the FAA to revoke an airline transport pilot certificate held by an individual who fails to disclose such safety-critical information on behalf of a manufacturer. The section also repeals unused FAA design and production organization certification authorities.

#### *Sec. 6. Periodic reviews of organization designation authorizations*

This section directs the FAA to conduct a comprehensive review of each manufacturing ODA holder’s capability to meet FAA regulations based on the holder’s organizational structures, requirements applicable to its officers and employees, and safety culture. The review, to be conducted every seven years, must include an assessment of the effectiveness of, and organization-wide adherence to, the ODA holder’s SMS and voluntary safety reporting system.

#### *Sec. 7. Limitations on delegation*

This section codifies an existing FAA policy that prohibits, with some exceptions, FAA delegation to an aircraft manufacturer the ability to certify on behalf of the agency the design of a “novel or unusual design feature” that results in a major change to an aircraft type design. The FAA may delegate such a matter when the FAA Administrator determines it is a routine task, or when, during the course of the certification process, the Administrator deter-

mines it no longer relates to a novel or unusual design feature. This section also prohibits FAA delegation of a certification function to a manufacturer solely because the agency lacks the qualified personnel or expertise to handle the function internally.

*Sec. 8. Oversight of organization designation authorization unit members*

Beginning one year after the date of enactment of this Act, this section requires the FAA Administrator to approve each new individual selected by an ODA holder engaged in the design of an aircraft, aircraft engine, propeller, or appliance before they become an authorized representative (or ODA unit member), who are employees of a manufacturer granted special permission to act on the FAA's behalf in validating compliance of aircraft systems and designs with FAA requirements. This section requires new ODA unit members to meet qualifications issued by the Administrator, such as the knowledge, technical proficiency, and moral character of such individual. This section authorizes the FAA Administrator to rescind an approval of an approved individual to serve as an ODA unit member at any time, for any reason. Notwithstanding the applicability of this section to new ODA unit members, this section directs the FAA to complete a review of each current Boeing ODA unit member to ensure each individual meets the agency's minimum qualifications issued under this section. This section also authorizes \$3,000,000 for each of fiscal years 2021 through 2023 in new appropriations for the FAA to ensure adequate staffing and resources necessary to undertake the work required under this section.

This section imposes a civil penalty for any individual employed by an ODA holder who interferes with (e.g., harasses, berates, or threatens) an ODA unit member's performance of authorized functions on behalf of the FAA and requires all ODA unit members to promptly report any cases of interference experienced or witnessed at a company.

This section creates a process for lateral communications so that FAA employees with certification responsibilities may directly contact non-managerial employees of an aircraft manufacturer for consultation regarding the certification of aircraft design, production, and other matters. This section prohibits a manufacturer from prohibiting or imposing any condition or restriction on its employees from making such contact with FAA employees.

This section repeals previously enacted statutory direction related to the ODA program.

*Sec. 9. Integrated project teams*

This section requires the FAA to convene an interdisciplinary integrated project team with specialists from the agency's Aircraft Certification Service and the Flight Standards Service at the outset of a certification program for a new airplane to ensure that engineers and pilots are operating from the same set of assumptions regarding airplane systems, system safety assessments, human factors, pilot response to non-normal conditions, and airplane-level safety effects of system failures.



*Sec. 10. Oversight integrity briefing*

This section requires the FAA to brief Congress on specific measures the agency has taken to reinforce that each FAA employee responsible for overseeing an aircraft manufacturer's ODA performs their work in accordance with safety management principles and in the public interest of aviation safety.

*Sec. 11. Appeals of certification decisions*

This section directs the FAA Administrator to issue an order establishing an appeal process to review an FAA employee's decision regarding a manufacturer's compliance with applicable design regulation. This section also prohibits FAA leadership and manufacturing executives from communicating about the dispute outside of the established review process unless those communications are publicly disclosed.

*Sec. 12. Employment restrictions*

This section implements a one-year cooling off period for incoming FAA employees from overseeing their former aerospace manufacturer employer. This section also implements a two-year cooling off period for former FAA certification employees representing their new employer before the FAA if they were responsible for overseeing that employer while at FAA, consistent with existing aviation safety inspector restrictions.

*Sec. 13. Professional development and skills enhancement*

This section directs the FAA to develop a program for regular recurrent training of FAA engineers, inspectors, and other subject matter experts in accordance with the training strategy developed pursuant to section 231 of the *FAA Reauthorization Act of 2018* (P.L. 112-95). This section also requires the FAA, to the maximum extent practicable, to implement measures that provide such employees with diverse professional opportunities to expand their knowledge and skills and minimize the likelihood of inappropriate bias toward a regulated company.

*Sec. 14. Voluntary safety reporting program*

This section directs the FAA, in collaboration with labor groups representing certain FAA employees, to implement a confidential voluntary safety reporting program for FAA engineers, safety inspectors, systems safety specialists, and other subject matter experts to identify and report potential safety issues or concerns. This section directs that the confidential voluntary safety reporting system be implemented in a manner consistent with other voluntary safety reporting systems administered by the FAA Administrator.

*Sec. 15. Compensation limitation*

This section prohibits an FAA employee from receiving a compensation adjustment solely on the basis of meeting or exceeding a deadline related to the completion of a certification function.

*Sec. 16. System safety assessments and other requirements*

This section directs the FAA to require an applicant for an amended type certificate for a transport airplane (as defined in this Act) to perform a system safety assessment with respect to each

proposed design change that the Administrator determines is significant, considering the airplane-level effects of individual failures and realistic pilot response times. This section requires the FAA to review each system safety assessment for sufficiency and adequate consideration of the airplane-level effects of individual failures and realistic pilot response times.

*Sec. 17. Flight crew alerting*

This section prohibits the FAA from issuing a type certificate for a new airliner design unless the airplane is equipped with a centralized crew alerting system that helps a pilot differentiate, prioritize, and respond to warnings, cautions, and advisories activated on the airplane.

*Sec. 18. Amended type certificates*

This section directs the FAA to exercise leadership in the creation of international policies and standards relating to the issuance of amended type certificates for new airplane designs. This section also requires the FAA to revise and improve the process for issuing amended type certificates based on the agency's international harmonization efforts and other requirements, including establishing the extent to which certain changes to an airplane's design are so significant that a new type certification process is warranted.

*Sec. 19. Whistleblower protections*

This section extends the whistleblower protections currently provided to air carrier employees to employees of manufacturing ODAs. This includes the prohibition on discharging or taking an adverse employment action against an employee due to the employee providing to the employer or Federal Government information relating to non-compliance with FAA regulations or orders.

*Sec. 20. Pilot training*

This section requires the FAA to independently review a proposal by a transport airplane manufacturer in setting pilot training requirements for an airliner. This section prohibits such manufacturer from making assurances regarding certain pilot training requirements to customers before the FAA establishes them without a clear disclaimer regarding the actual status of training requirements and prohibits such manufacturer from providing financial incentives such as rebates to a potential customer regarding the scope or magnitude of pilot training for an airplane.

Beginning the day after the date on which the FAA issues regulations in response to the expert safety review required by this section, this section prohibits the FAA from issuing a new or amended type certificate to a transport airplane manufacturer for a transport airplane unless the manufacturer has demonstrated to the FAA it has accounted for realistic assumptions regarding pilot reaction time to non-normal conditions in designing the systems and instrumentation of such airplane.

This section directs the FAA to initiate an expert safety review of assumptions relied upon by the FAA and airplane manufacturers, including a review of assumptions regarding the time presumed for pilot response to non-normal conditions, in designing air-

plane systems and instrumentation and consideration of the global nature of the marketplace and varying pilot training programs worldwide. This section also directs the FAA to initiate a call to action safety review of FAA pilot certification standards and directs the FAA to exercise leadership in setting global standards to improve airline pilot training and qualifications.

*Sec. 21. Nonconformity with approved type design*

This section prohibits a manufacturer from delivering an aircraft that does not conform with its approved type design—the configuration that the FAA certified as safe—except when multiple disclosure and other safeguards are met to ensure the nonconformity does not jeopardize safety. For example, the manufacturer must promptly notify the FAA and operators of the aircraft about the nonconformity, the FAA must determine the nonconformity does not reduce the margin of safety by any measure without any change in flight crew operating procedures, and the manufacturer agrees to correct it within a timeframe set by the FAA while waiving financial penalties for customers who wish to delay delivery of an aircraft until it is repaired. This section imposes an up to \$1 million civil penalty for each nonconforming aircraft.

*Sec. 22. Implementation of recommendations*

This section requires the FAA to report to Congress on the status of the agency’s implementation of recommendations made by the NTSB, JATR, DOT IG, and other entities in response to the Lion Air flight 610 and Ethiopian Airlines flight 302 accidents involving the Boeing 737 MAX aircraft. For any recommendation with which the FAA Administrator does not concur, the Administrator must provide to Congress a detailed explanation for such non-concurrence.

*Sec. 23. Oversight of FAA Compliance Program*

This section directs the FAA to establish an Executive Council to oversee the use and effectiveness of the FAA’s Compliance Program across the agency’s program offices and make recommendations to the FAA Administrator on controls that should be issued to improve the Program’s effectiveness and to ensure the highest levels of aviation safety.

*Sec. 24. Settlement agreement*

This section expresses a sense of Congress that the FAA administrator should fully exercise all rights and pursue all remedies available to the administrator under the 2015 FAA-Boeing settlement agreement, including a demand for full payment of applicable deferred civil penalties if Boeing has not fully performed all of its obligations incurred under the agreement.

*Sec. 25. Human factors*

This section directs the FAA to conduct an evaluation of tools and methods that support the better integration of human factors and system safety assessments of aircraft flight deck and flight control systems into the FAA’s certification process. This section directs the FAA to develop a human factors education program for FAA employees that teaches about the effects of modern flight deck

systems on human performance and new approaches for better integration of human factors into aircraft design and certification.

*Sec. 26. Technical corrections*

This section makes various technical corrections to ensure the bill coexists with the FAA's existing civil penalty authorities.

*Sec. 27. Definitions*

This section defines the terms used in this measure including: “Administration”; “FAA”; “Administrator”; “organization designation authorization”; “congressional committees of jurisdiction”; “human factors”; “transport airplane”; and “type certificate”.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

**TITLE 49, UNITED STATES CODE**

\* \* \* \* \*

**SUBTITLE VII—AVIATION PROGRAMS**

\* \* \* \* \*

**PART A—AIR COMMERCE AND SAFETY**

\* \* \* \* \*

**SUBPART II—ECONOMIC REGULATION**

\* \* \* \* \*

**CHAPTER 421—LABOR-MANAGEMENT PROVISIONS**

\* \* \* \* \*

**SUBCHAPTER III—WHISTLEBLOWER PROTECTION PROGRAM**

**§ 42121. Protection of employees providing air safety information**

[(a) DISCRIMINATION AGAINST AIRLINE EMPLOYEES.—No air carrier or contractor or subcontractor of an air carrier may discharge an employee or otherwise discriminate against an employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)—

(1) provided, caused to be provided, or is about to provide (with any knowledge of the employer) or cause to be provided to the employer or Federal Government information relating to

any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration or any other provision of Federal law relating to air carrier safety under this subtitle or any other law of the United States;

[(2) has filed, caused to be filed, or is about to file (with any knowledge of the employer) or cause to be filed a proceeding relating to any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration or any other provision of Federal law relating to air carrier safety under this subtitle or any other law of the United States;

[(3) testified or is about to testify in such a proceeding; or

[(4) assisted or participated or is about to assist or participate in such a proceeding.]

(a) *PROHIBITED DISCRIMINATION.*—A holder of a certificate under section 44704 or 44705 of this title, or contractor or subcontractor of such holder, may not discharge an employee or otherwise discriminate against an employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)—

(1) provided, caused to be provided, or is about to provide (with any knowledge of the employer) or cause to be provided to the employer or Federal Government information relating to any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration or any other provision of Federal law relating to aviation safety under this subtitle or any other law of the United States;

(2) has filed, caused to be filed, or is about to file (with any knowledge of the employer) or cause to be filed a proceeding relating to any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration or any other provision of Federal law relating to aviation safety under this subtitle or any other law of the United States;

(3) testified or is about to testify in such a proceeding; or

(4) assisted or participated or is about to assist or participate in such a proceeding.

(b) *DEPARTMENT OF LABOR COMPLAINT PROCEDURE.*—

(1) *FILING AND NOTIFICATION.*—A person who believes that he or she has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, not later than 90 days after the date on which such violation occurs, file (or have any person file on his or her behalf) a complaint with the Secretary of Labor alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary of Labor shall notify, in writing, the person named in the complaint and the Administrator of the Federal Aviation Administration of the filing of the complaint, of the allegations contained in the complaint, of the substance of evidence supporting the complaint, and of the opportunities that will be afforded to such person under paragraph (2).

(2) *INVESTIGATION; PRELIMINARY ORDER.*—

(A) *IN GENERAL.*—Not later than 60 days after the date of receipt of a complaint filed under paragraph (1) and after affording the person named in the complaint an opportunity to submit to the Secretary of Labor a written response to the complaint and an opportunity to meet with

a representative of the Secretary to present statements from witnesses, the Secretary of Labor shall conduct an investigation and determine whether there is reasonable cause to believe that the complaint has merit and notify, in writing, the complainant and the person alleged to have committed a violation of subsection (a) of the Secretary's findings. If the Secretary of Labor concludes that there is a reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary shall accompany the Secretary's findings with a preliminary order providing the relief prescribed by paragraph (3)(B). Not later than 30 days after the date of notification of findings under this paragraph, either the person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Such hearings shall be conducted expeditiously. If a hearing is not requested in such 30-day period, the preliminary order shall be deemed a final order that is not subject to judicial review.

(B) REQUIREMENTS.—

(i) REQUIRED SHOWING BY COMPLAINANT.—The Secretary of Labor shall dismiss a complaint filed under this subsection and shall not conduct an investigation otherwise required under subparagraph (A) unless the complainant makes a prima facie showing that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(ii) SHOWING BY EMPLOYER.—Notwithstanding a finding by the Secretary that the complainant has made the showing required under clause (i), no investigation otherwise required under subparagraph (A) shall be conducted if the employer demonstrates, by clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(iii) CRITERIA FOR DETERMINATION BY SECRETARY.—The Secretary may determine that a violation of subsection (a) has occurred only if the complainant demonstrates that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(iv) PROHIBITION.—Relief may not be ordered under subparagraph (A) if the employer demonstrates by clear and convincing evidence that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(3) FINAL ORDER.—

(A) DEADLINE FOR ISSUANCE; SETTLEMENT AGREEMENTS.—Not later than 120 days after the date of conclusion of a hearing under paragraph (2), the Secretary of Labor shall issue a final order providing the relief pre-

scribed by this paragraph or denying the complaint. At any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary of Labor, the complainant, and the person alleged to have committed the violation.

(B) REMEDY.—If, in response to a complaint filed under paragraph (1), the Secretary of Labor determines that a violation of subsection (a) has occurred, the Secretary of Labor shall order the person who committed such violation to—

- (i) take affirmative action to abate the violation;
- (ii) reinstate the complainant to his or her former position together with the compensation (including back pay) and restore the terms, conditions, and privileges associated with his or her employment; and
- (iii) provide compensatory damages to the complainant.

If such an order is issued under this paragraph, the Secretary of Labor, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred, as determined by the Secretary of Labor, by the complainant for, or in connection with, the bringing the complaint upon which the order was issued.

(C) FRIVOLOUS COMPLAINTS.—If the Secretary of Labor finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary of Labor may award to the prevailing employer a reasonable attorney's fee not exceeding \$1,000.

(4) REVIEW.—

(A) APPEAL TO COURT OF APPEALS.—Any person adversely affected or aggrieved by an order issued under paragraph (3) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the date of such violation. The petition for review must be filed not later than 60 days after the date of the issuance of the final order of the Secretary of Labor. Review shall conform to chapter 7 of title 5, United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order.

(B) LIMITATION ON COLLATERAL ATTACK.—An order of the Secretary of Labor with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

(5) ENFORCEMENT OF ORDER BY SECRETARY OF LABOR.—Whenever any person has failed to comply with an order issued under paragraph (3), the Secretary of Labor may file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. In actions brought under this paragraph, the district courts shall

have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief and compensatory damages.

(6) ENFORCEMENT OF ORDER BY PARTIES.—

(A) COMMENCEMENT OF ACTION.—A person on whose behalf an order was issued under paragraph (3) may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

(B) ATTORNEY FEES.—The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such award is appropriate.

(c) MANDAMUS.—Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28, United States Code.

[(d) NONAPPLICABILITY TO DELIBERATE VIOLATIONS.—Subsection (a) shall not apply with respect to an employee of an air carrier, contractor, or subcontractor who, acting without direction from such air carrier, contractor, or subcontractor (or such person's agent), deliberately causes a violation of any requirement relating to air carrier safety under this subtitle or any other law of the United States.

[(e) CONTRACTOR DEFINED.—In this section, the term “contractor” means a company that performs safety-sensitive functions by contract for an air carrier.]

(d) NONAPPLICABILITY TO DELIBERATE VIOLATIONS.—Subsection (a) shall not apply with respect to an employee of a holder of a certificate issued under section 44704 or 44705, or a contractor or subcontractor thereof, who, acting without direction from such certificate-holder, contractor, or subcontractor (or such person's agent), deliberately causes a violation of any requirement relating to aviation safety under this subtitle or any other law of the United States.

(e) CONTRACTOR DEFINED.—In this section, the term “contractor” means—

(1) a person that performs safety-sensitive functions by contract for an air carrier or commercial operator; or

(2) a person that performs safety-sensitive functions related to the design or production of an aircraft, aircraft engine, propeller, appliance, or component thereof by contract for a holder of a certificate issued under section 44704.

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## SUBPART III—SAFETY

\* \* \* \* \*

### CHAPTER 447—SAFETY REGULATION

Sec.  
44701. General requirements.

\* \* \* \* \*

44739. Pets on airplanes.



**[Sec. 44737. Special rule for certain aircraft operations.]**

*44740. Special rule for certain aircraft operations.*

*44741. Approval of organization designation authorization unit members.*

*44742. Interference with the duties of organization designation authorization unit members.*

*44743. Pilot training requirements.*

\* \* \* \* \*

## **§ 44702. Issuance of certificates**

(a) **GENERAL AUTHORITY AND APPLICATIONS.**—The Administrator of the Federal Aviation Administration may issue airman certificates, design organization certificates, type certificates, production certificates, airworthiness certificates, air carrier operating certificates, airport operating certificates, air agency certificates, and air navigation facility certificates under this chapter. An application for a certificate must—

- (1) be under oath when the Administrator requires; and
- (2) be in the form, contain information, and be filed and served in the way the Administrator prescribes.

(b) **CONSIDERATIONS.**—When issuing a certificate under this chapter, the Administrator shall—

- (1) consider—
  - (A) the duty of an air carrier to provide service with the highest possible degree of safety in the public interest; and
  - (B) differences between air transportation and other air commerce; and
- (2) classify a certificate according to the differences between air transportation and other air commerce.

(c) **PRIOR CERTIFICATION.**—The Administrator may authorize an aircraft, aircraft engine, propeller, or appliance for which a certificate has been issued authorizing the use of the aircraft, aircraft engine, propeller, or appliance in air transportation to be used in air commerce without another certificate being issued.

(d) **DELEGATION.**—(1) Subject to regulations, supervision, and review the Administrator may prescribe, the Administrator may delegate to a qualified private person, or to an employee under the supervision of that person, a matter related to—

- (A) the examination, testing, and inspection necessary to issue a certificate under this chapter; and
- (B) issuing the certificate.

(2) The Administrator may rescind a delegation under this subsection at any time for any reason the Administrator considers appropriate.

(3) A person affected by an action of a private person under this subsection may apply for reconsideration of the action by the Administrator. On the Administrator's own initiative, the Administrator may reconsider the action of a private person at any time. If the Administrator decides on reconsideration that the action is unreasonable or unwarranted, the Administrator shall change, modify, or reverse the action. If the Administrator decides the action is warranted, the Administrator shall affirm the action.

(4) *Notwithstanding any other provision of law, the Administrator may not delegate a matter under this subsection—*

- (A) *with respect to the certification of the design of a novel or unusual design feature that results in a major*

*change to a type design, except when the Administrator determines—*

*(i) a matter is a routine task; or*

*(ii) during the course of the certification process, that a matter no longer relates to a novel or unusual design feature; or*

*(B) on the sole basis that the Federal Aviation Administration lacks a sufficient number of personnel qualified or with the requisite expertise to perform the function.*

\* \* \* \* \*

**§ 44704. Type certificates, production certificates, airworthiness certificates, and design and production organization certificates**

**(a) TYPE CERTIFICATES.—**

**(1) ISSUANCE, INVESTIGATIONS, AND TESTS.—**The Administrator of the Federal Aviation Administration shall issue a type certificate for an aircraft, aircraft engine, or propeller, or for an appliance specified under paragraph (2)(A) of this subsection when the Administrator finds that the aircraft, aircraft engine, propeller, or appliance is properly designed and manufactured, performs properly, and meets the regulations and minimum standards prescribed under section 44701(a) of this title. On receiving an application for a type certificate, the Administrator shall investigate the application and may conduct a hearing. The Administrator shall make, or require the applicant to make, tests the Administrator considers necessary in the interest of safety.

**(2) SPECIFICATIONS.—**The Administrator may—

**(A)** specify in regulations those appliances that reasonably require a type certificate in the interest of safety;

**(B)** include in a type certificate terms required in the interest of safety; and

**(C)** record on the certificate a numerical specification of the essential factors related to the performance of the aircraft, aircraft engine, or propeller for which the certificate is issued.

**(3) SPECIAL RULES FOR NEW AIRCRAFT AND APPLIANCES.—**Except as provided in paragraph (4), if the holder of a type certificate agrees to permit another person to use the certificate to manufacture a new aircraft, aircraft engine, propeller, or appliance, the holder shall provide the other person with written evidence, in a form acceptable to the Administrator, of that agreement. Such other person may manufacture a new aircraft, aircraft engine, propeller, or appliance based on a type certificate only if such other person is the holder of the type certificate or has permission from the holder.

**(4) LIMITATION FOR AIRCRAFT MANUFACTURED BEFORE AUGUST 5, 2004.—**Paragraph (3) shall not apply to a person who began the manufacture of an aircraft before August 5, 2004, and who demonstrates to the satisfaction of the Administrator that such manufacture began before August 5, 2004, if the name of the holder of the type certificate for the aircraft does not appear on the airworthiness certificate or identification plate of the aircraft. The holder of the type certificate for the

aircraft shall not be responsible for the continued airworthiness of the aircraft. A person may invoke the exception provided by this paragraph with regard to the manufacture of only one aircraft.

(5) RELEASE OF DATA.—

(A) IN GENERAL.—Notwithstanding any other provision of law, the Administrator may make available upon request, to a person seeking to maintain the airworthiness or develop product improvements of an aircraft, engine, propeller, or appliance, engineering data in the possession of the Administration relating to a type certificate or a supplemental type certificate for such aircraft, engine, propeller, or appliance, without the consent of the owner of record, if the Administrator determines that—

(i) the certificate containing the requested data has been inactive for 3 or more years, except that the Administrator may reduce this time if required to address an unsafe condition associated with the product;

(ii) after using due diligence, the Administrator is unable to find the owner of record, or the owner of record's heir, of the type certificate or supplemental type certificate; and

(iii) making such data available will enhance aviation safety.

(B) ENGINEERING DATA DEFINED.—In this section, the term “engineering data” as used with respect to an aircraft, engine, propeller, or appliance means type design drawing and specifications for the entire aircraft, engine, propeller, or appliance or change to the aircraft, engine, propeller, or appliance, including the original design data, and any associated supplier data for individual parts or components approved as part of the particular certificate for the aircraft, engine, propeller, or appliance.

(C) REQUIREMENT TO MAINTAIN DATA.—The Administrator shall maintain engineering data in the possession of the Administration relating to a type certificate or a supplemental type certificate that has been inactive for 3 or more years.

[(6) TYPE CERTIFICATION RESOLUTION PROCESS.—

[(A) IN GENERAL.—Not later than 15 months after the date of enactment of the FAA Reauthorization Act of 2018, the Administrator shall establish an effective, timely, and milestone-based issue resolution process for type certification activities under this subsection.

[(B) PROCESS REQUIREMENTS.—The resolution process shall provide for—

[(i) resolution of technical issues at pre-established stages of the certification process, as agreed to by the Administrator and the type certificate applicant;

[(ii) automatic elevation to appropriate management personnel of the Federal Aviation Administration and the type certificate applicant of any major certification process milestone that is not completed or resolved within a specific period of time agreed to by the Administrator and the type certificate applicant; and

[(iii) resolution of a major certification process milestone elevated pursuant to clause (ii) within a specific period of time agreed to by the Administrator and the type certificate applicant.

[(C) MAJOR CERTIFICATION PROCESS MILESTONE DEFINED.—In this paragraph, the term “major certification process milestone” means a milestone related to a type certification basis, type certification plan, type inspection authorization, issue paper, or other major type certification activity agreed to by the Administrator and the type certificate applicant.]

(6) NONCONFORMITY WITH APPROVED TYPE DESIGN.—

(A) IN GENERAL.—*Except as provided in subparagraph (D), a holder of a production certificate for an aircraft may not present a nonconforming aircraft to the Administrator for issuance of an airworthiness certificate.*

(B) CIVIL PENALTY.—*Notwithstanding section 46301, a production certificate holder who knowingly violates subparagraph (A) shall be liable to the Administrator for a civil penalty of not more than \$1,000,000 for each nonconforming aircraft.*

(C) PENALTY CONSIDERATIONS.—*In determining the amount of a civil penalty under subparagraph (B), the Administrator shall consider—*

*(i) the nature, circumstances, extent, and gravity of the violation, including the length of time the nonconformity was known but not disclosed; and*

*(ii) with respect to the violator, the degree of culpability, any history of prior violations, and the size of the business concern.*

(D) REMEDIAL ACTION.—*The Administrator may permit a production certificate holder to present a nonconforming aircraft to the Administrator for an airworthiness certificate if—*

*(i) the Administrator determines the nonconformity, when compared to the configuration approved as part of the type design, does not diminish by any degree the aircraft’s safe operation without any change in flight crew operating procedures;*

*(ii) the Administrator determines the nonconformity was not the product of an intentional decision by the production certificate holder to alter the aircraft’s configuration from the approved type design;*

*(iii) the production certificate holder has fully complied with subparagraph (E);*

*(iv) the production certificate holder agrees to correct the nonconformity on all nonconforming aircraft within a timeframe that is—*

*(I) prescribed by the Administrator; and*

*(II) commensurate with the severity of the nonconformity;*

*(v) the production certificate holder informs a person who is to take delivery of the nonconforming aircraft of the nonconformance prior to its delivery; and*

(vi) the production certificate holder agrees not to impose any penalty, financial or otherwise, on a person that chooses to delay the delivery of a nonconforming aircraft until the production certificate holder, to the Administrator's satisfaction, conforms the aircraft to the approved type design of such aircraft.

(E) NOTIFICATION AND PROPOSED REMEDIAL ACTION.—A production certificate holder shall, within 5 days of determining that such production certificate holder delivered a nonconforming aircraft, notify the Administrator, the purchaser of the airplane, and (if the purchaser is a lessor) the intended operator of the airplane, if known. A notification under this clause shall describe—

- (i) the nonconformity in detail; and
- (ii) the production certificate holder's initial proposal for actions necessary to eliminate the nonconformity.

(F) NONCONFORMING AIRCRAFT DEFINED.—In this paragraph, the term “nonconforming aircraft” means an aircraft that does not conform to the approved type design for such aircraft type.

(b) SUPPLEMENTAL TYPE CERTIFICATES.—

(1) ISSUANCE.—The Administrator may issue a type certificate designated as a supplemental type certificate for a change to an aircraft, aircraft engine, propeller, or appliance.

(2) CONTENTS.—A supplemental type certificate issued under paragraph (1) shall consist of the change to the aircraft, aircraft engine, propeller, or appliance with respect to the previously issued type certificate for the aircraft, aircraft engine, propeller, or appliance.

(3) REQUIREMENT.—If the holder of a supplemental type certificate agrees to permit another person to use the certificate to modify an aircraft, aircraft engine, propeller, or appliance, the holder shall provide the other person with written evidence, in a form acceptable to the Administrator, of that agreement. A person may change an aircraft, aircraft engine, propeller, or appliance based on a supplemental type certificate only if the person requesting the change is the holder of the supplemental type certificate or has permission from the holder to make the change.

(c) PRODUCTION CERTIFICATES.—The Administrator shall issue a production certificate authorizing the production of a duplicate of an aircraft, aircraft engine, propeller, or appliance for which a type certificate has been issued when the Administrator finds the duplicate will conform to the certificate. On receiving an application, the Administrator shall inspect, and may require testing of, a duplicate to ensure that it conforms to the requirements of the certificate. The Administrator may include in a production certificate terms required in the interest of safety.

(d) AIRWORTHINESS CERTIFICATES.—(1) The registered owner of an aircraft may apply to the Administrator for an airworthiness certificate for the aircraft. The Administrator shall issue an airworthiness certificate when the Administrator finds that the aircraft conforms to its type certificate and, after inspection, is in condition for safe operation. The Administrator shall register each airworthiness certificate and may include appropriate information in

the certificate. The certificate number or other individual designation the Administrator requires shall be displayed on the aircraft. The Administrator may include in an airworthiness certificate terms required in the interest of safety.

(2) A person applying for the issuance or renewal of an airworthiness certificate for an aircraft for which ownership has not been recorded under section 44107 or 44110 of this title must submit with the application information related to the ownership of the aircraft the Administrator decides is necessary to identify each person having a property interest in the aircraft and the kind and extent of the interest.

**[(e) DESIGN AND PRODUCTION ORGANIZATION CERTIFICATES.—**

**[(1) ISSUANCE.—**Beginning January 1, 2013, the Administrator may issue a certificate to a design organization, production organization, or design and production organization to authorize the organization to certify compliance of aircraft, aircraft engines, propellers, and appliances with the requirements and minimum standards prescribed under section 44701(a). An organization holding a certificate issued under this subsection shall be known as a certified design and production organization (in this subsection referred to as a “CDPO”).

**[(2) APPLICATIONS.—**On receiving an application for a CDPO certificate, the Administrator shall examine and rate the organization submitting the application, in accordance with regulations to be prescribed by the Administrator, to determine whether the organization has adequate engineering, design, and production capabilities, standards, and safeguards to make certifications of compliance as described in paragraph (1).

**[(3) ISSUANCE OF CERTIFICATES BASED ON CDPO FINDINGS.—**The Administrator may rely on certifications of compliance by a CDPO when making determinations under this section.

**[(4) PUBLIC SAFETY.—**The Administrator shall include in a CDPO certificate terms required in the interest of safety.

**[(5) NO EFFECT ON POWER OF REVOCATION.—**Nothing in this subsection affects the authority of the Secretary of Transportation to revoke a certificate.】

**(e) DISCLOSURE OF SAFETY-CRITICAL INFORMATION.—**

*(1) IN GENERAL.—Notwithstanding a delegation described in section 44702(d), the Administrator shall require an applicant for, or holder of, a type certificate for a transport-category aircraft covered under part 25 of title 14, Code of Federal Regulations, to submit safety-critical information with respect to such aircraft to the Administrator in such form, manner, or time as the Administrator may require. Such safety-critical information shall include—*

*(A) any design and operational details, intended functions, and failure modes of any system that, without being commanded by the flight crew, commands the operation of any safety-critical function or feature required for control of an aircraft during flight or that otherwise changes the flight path or airspeed of an aircraft;*

*(B) the design and operational details, intended functions, failure modes, and mode annunciations of autopilot and autothrottle systems, if applicable;*

(C) any failure or operating condition that the applicant or holder anticipates or has concluded would result in an outcome with a severity level of hazardous or catastrophic, as defined in the appropriate Administration airworthiness requirements and guidance applicable to transport-category aircraft defining risk severity;

(D) any adverse handling quality that fails to meet the requirements of applicable regulations without the addition of a software system to augment the flight controls of the aircraft to produce compliant handling qualities; and

(E) a system safety assessment with respect to a system described in subparagraph (A) or (B) or with respect to any component or other system for which failure or erroneous operation of such component or system could result in an outcome with a severity level of hazardous or catastrophic, as defined in the appropriate Administration airworthiness requirements and guidance applicable to transport-category aircraft defining risk severity.

(2) ONGOING COMMUNICATIONS.—

(A) NEWLY DISCOVERED INFORMATION.—The Administrator shall require that an applicant for, or holder of, a type certificate disclose to the Administrator, in such form, manner, or time as the Administrator may require, any newly discovered information or design or analysis change that would materially alter any submission to the Administrator under paragraph (1).

(B) AIRCRAFT SYSTEM DEVELOPMENT CHANGES.—The Administrator shall establish multiple milestones throughout the certification process at which a proposed aircraft system will be assessed to determine whether any change to such system during the certification process is such that such system should be considered novel or unusual by the Administrator.

(3) FLIGHT MANUALS.—The Administrator shall ensure that an aircraft flight manual and a flight crew operating manual (as appropriate or applicable) for an aircraft contains a description of the operation of a system described in paragraph (1)(A) and flight crew procedures for responding to a failure or aberrant operation of such system.

(4) CIVIL PENALTY.—

(A) AMOUNT.—Notwithstanding section 46301, an applicant for, or holder of, a type certificate that knowingly violates paragraph (1), (2), or (3) of this subsection shall be liable to the Administrator for a civil penalty of not more than \$1,000,000 for each violation.

(B) PENALTY CONSIDERATIONS.—In determining the amount of a civil penalty under subparagraph (A), the Administrator shall consider—

(i) the nature, circumstances, extent, and gravity of the violation, including the length of time that such safety-critical information was known but not disclosed; and

(ii) with respect to the violator, the degree of culpability, any history of prior violations, and the size of the business concern.

(5) *REVOCATION AND CIVIL PENALTY FOR INDIVIDUALS.—*

(A) *IN GENERAL.—The Administrator shall revoke any airline transport pilot certificate issued under section 44703 held by any individual who, while acting on behalf of an applicant for, or holder of, a type certificate, knowingly makes a false statement with respect to any of the matters described in subparagraphs (A) through (D) of paragraph (1).*

(B) *AUTHORITY TO IMPOSE CIVIL PENALTY.—The Administrator may impose a civil penalty under section 46301 for each violation described in subparagraph (A).*

(6) *RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to affect or otherwise inhibit the authority of the Administrator to deny an application by an applicant for a type certificate or to revoke a type certificate of a holder of such certificate.*

(7) *DEFINITION OF TYPE CERTIFICATE.—In this subsection, the term “type certificate”—*

(A) *means a type certificate issued under subsection (a) or an amendment to such certificate; and*

(B) *does not include a supplemental type certificate issued under subsection (b).*

(f) *HEARING REQUIREMENT.—The Administrator may find that a person has violated subsection (a)(6) or paragraph (1), (2), or (3) of subsection (e) and impose a civil penalty under the applicable subsection only after notice and an opportunity for a hearing. The Administrator shall provide a person—*

(1) *written notice of the violation and the amount of penalty; and*

(2) *the opportunity for a hearing under subpart G of part 13 of title 14, Code of Federal Regulations.*

(g) *CERTIFICATION DISPUTE RESOLUTION.—*

(1) *DISPUTE RESOLUTION PROCESS AND APPEALS.—*

(A) *IN GENERAL.—Not later than 60 days after the date of enactment of this subsection, the Administrator shall issue an order establishing—*

(i) *an effective, timely, and milestone-based issue resolution process for type certification activities under subsection (a); and*

(ii) *a process by which a decision, finding of compliance or noncompliance, or other act of the Administration, with respect to compliance with design requirements, may be appealed by a covered person directly involved with the certification activities in dispute on the basis that such decision, finding, or act is erroneous or inconsistent with this chapter, regulations, or guidance materials promulgated by the Administrator, or other requirements.*

(B) *ESCALATION.—The order issued under subparagraph*

(A) *shall provide for—*

(i) *resolution of technical issues at pre-established stages of the certification process, as agreed to by the Administrator and the type certificate applicant;*

(ii) *automatic elevation to appropriate management personnel of the Administration and the type certificate*



applicant of any major certification process milestone that is not completed or resolved within a specific period of time agreed to by the Administrator and the type certificate applicant;

(iii) resolution of a major certification process milestone elevated pursuant to clause (ii) with a specific period of time agreed to by the Administrator and the type certificate applicant;

(iv) initial review by appropriate Administration employees of any appeal described in subparagraph (A)(ii); and

(v) subsequent review of any further appeal by appropriate management personnel of the Administration and the Associate Administrator for Aviation Safety.

(C) DISPOSITION.—

(i) WRITTEN DECISION.—The Associate Administrator for Aviation Safety shall issue a written decision on each appeal submitted under subparagraph (A)(ii), stating the grounds for the decision of the Associate Administrator.

(ii) REPORT TO CONGRESS.—Not later than December 31 of each calendar year through calendar year 2025, the Administrator shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report summarizing each appeal resolved under this subsection.

(D) FINAL REVIEW.—

(i) IN GENERAL.—A written decision of the Associate Administrator under subparagraph (C) may be appealed to the Administrator for a final review and determination.

(ii) DECLINE TO REVIEW.—The Administrator may decline to review an appeal initiated pursuant to clause (i).

(iii) JUDICIAL REVIEW.—Notwithstanding any other provision of law, neither a final determination of the Administrator under clause (i) nor a decision to decline to review an appeal under clause (ii) shall be subject to judicial review.

(2) PROHIBITED CONTACTS.—

(A) PROHIBITION GENERALLY.—During the course of an appeal under this subsection, no covered official may engage in an ex parte communication with an individual representing or acting on behalf of an applicant for, or holder of, a certificate under this section in relation to such appeal unless such communication is disclosed pursuant to subparagraph (B).

(B) DISCLOSURE.—If, during the course of an appeal under this subsection, a covered official engages in, receives, or is otherwise made aware of an ex parte communication, the covered official shall disclose such communication in the public record at the time of the issuance of the written decision in accordance with subsection (g)(1)(C), including the time and date of the communication, subject

*of communication, and all persons engaged in such communication.*

(3) *DEFINITIONS.—In this subsection:*

(A) *COVERED PERSON.—The term “covered person” means either—*

*(i) an employee of the Administration whose responsibilities relate to the certification of aircraft, engines, propellers, or appliances; or*

*(ii) an applicant for, or holder of, a type certificate or amended type certificate issued under this section.*

(B) *COVERED OFFICIAL.—The term “covered official” means the following officials:*

*(i) The Executive Director or any Deputy Director of the Aircraft Certification Service.*

*(ii) The Deputy Executive Director for Regulatory Operations of the Aircraft Certification Service.*

*(iii) The Director or Deputy Director of the Compliance and Airworthiness Division of the Aircraft Certification Service.*

*(iv) The Director or Deputy Director of the System Oversight Division of the Aircraft Certification Service.*

*(v) The Director or Deputy Director of the Policy and Innovation Division of the Aircraft Certification Service.*

*(vi) The Executive Director or any Deputy Executive Director of the Flight Standards Service.*

*(vii) The Associate Administrator or Deputy Associate Administrator for Aviation Safety.*

*(viii) The Deputy Administrator of the Federal Aviation Administration.*

*(ix) The Administrator of the Federal Aviation Administration.*

*(x) Any similarly situated or successor FAA management position, as determined by the Administrator.*

(C) *MAJOR CERTIFICATION PROCESS MILESTONE.—The term “major certification process milestone” means a milestone related to the type certification basis, type certification plan, type inspection authorization, issue paper, or other major type certification activity agreed to by the Administrator and the type certificate applicant.*

(4) *RULE OF CONSTRUCTION.—Nothing in this subsection shall apply to the communication of a good-faith complaint by any individual alleging—*

*(A) gross misconduct;*

*(B) a violation of title 18; or*

*(C) a violation of any of the provisions of part 2635 or 6001 of title 5, Code of Federal Regulations.*

\* \* \* \* \*

#### **§ 44711. Prohibitions and exemption**

(a) *PROHIBITIONS.—A person may not—*

*(1) operate a civil aircraft in air commerce without an airworthiness certificate in effect or in violation of a term of the certificate;*

(2) serve in any capacity as an airman with respect to a civil aircraft, aircraft engine, propeller, or appliance used, or intended for use, in air commerce—

(A) without an airman certificate authorizing the airman to serve in the capacity for which the certificate was issued; or

(B) in violation of a term of the certificate or a regulation prescribed or order issued under section 44701(a) or (b) or any of sections 44702–44716 of this title;

(3) employ for service related to civil aircraft used in air commerce an airman who does not have an airman certificate authorizing the airman to serve in the capacity for which the airman is employed;

(4) operate as an air carrier without an air carrier operating certificate or in violation of a term of the certificate;

(5) operate aircraft in air commerce in violation of a regulation prescribed or certificate issued under section 44701(a) or (b) or any of sections 44702–44716 of this title;

(6) operate a seaplane or other aircraft of United States registry on the high seas in violation of a regulation under section 3 of the International Navigational Rules Act of 1977 (33 U.S.C. 1602);

(7) violate a term of an air agency, design organization certificate, or production certificate or a regulation prescribed or order issued under section 44701(a) or (b) or any of sections 44702–44716 of this title related to the holder of the certificate;

(8) operate an airport without an airport operating certificate required under section 44706 of this title or in violation of a term of the certificate;

(9) manufacture, deliver, sell, or offer for sale any aviation fuel or additive in violation of a regulation prescribed under section 44714 of this title; or

(10) violate section 44732 or any regulation issued thereunder.

(b) EXEMPTION.—On terms the Administrator of the Federal Aviation Administration prescribes as being in the public interest, the Administrator may exempt a foreign aircraft and airmen serving on the aircraft from subsection (a) of this section. However, an exemption from observing air traffic regulations may not be granted.

(c) PROHIBITION ON EMPLOYMENT OF CONVICTED COUNTERFEIT PART TRAFFICKERS.—No person subject to this chapter may knowingly employ anyone to perform a function related to the procurement, sale, production, or repair of a part or material, or the installation of a part into a civil aircraft, who has been convicted in a court of law of a violation of any Federal law relating to the installation, production, repair, or sale of a counterfeit or fraudulently-represented aviation part or material.

[(d) POSTEMPLOYMENT RESTRICTIONS FOR FLIGHT STANDARDS INSPECTORS.—

[(1) PROHIBITION.—A person holding an operating certificate issued under title 14, Code of Federal Regulations, may not knowingly employ, or make a contractual arrangement that permits, an individual to act as an agent or representative of the certificate holder in any matter before the Federal Aviation

Administration if the individual, in the preceding 2-year period—

[(A) served as, or was responsible for oversight of, a flight standards inspector of the Administration; and

[(B) had responsibility to inspect, or oversee inspection of, the operations of the certificate holder.

[(2) WRITTEN AND ORAL COMMUNICATIONS.—For purposes of paragraph (1), an individual shall be considered to be acting as an agent or representative of a certificate holder in a matter before the Administration if the individual makes any written or oral communication on behalf of the certificate holder to the Administration (or any of its officers or employees) in connection with a particular matter, whether or not involving a specific party and without regard to whether the individual has participated in, or had responsibility for, the particular matter while serving as a flight standards inspector of the Administration.]

(d) *POST-EMPLOYMENT RESTRICTIONS FOR INSPECTORS AND ENGINEERS.*—

(1) *PROHIBITION.*—A person holding a certificate issued under part 21 or 119 of title 14, Code of Federal Regulations, may not knowingly employ, or make a contractual arrangement that permits, an individual to act as an agent or representative of such person in any matter before the Administration if the individual, in the preceding 2-year period—

(A) served as, or was responsible for oversight of—

(i) a flight standards inspector of the Administration;

or

(ii) an employee of the Administration with responsibility for certification functions with respect to a holder of a certificate issued under section 44704(a); and

(B) had responsibility to inspect, or oversee inspection of, the operations of such person.

(2) *WRITTEN AND ORAL COMMUNICATIONS.*—For purposes of paragraph (1), an individual shall be considered to be acting as an agent or representative of a certificate holder in a matter before the Administration if the individual makes any written or oral communication on behalf of the certificate holder to the Administration (or any of its officers or employees) in connection with a particular matter, whether or not involving a specific party and without regard to whether the individual has participated in, or had responsibility for, the particular matter while serving as an individual covered under paragraph (1).

\* \* \* \* \*

#### **§ 44735. Limitation on disclosure of safety information**

(a) *IN GENERAL.*—Except as provided by subsection (c), a report, data, or other information described in subsection (b) shall not be disclosed to the public by the Administrator of the Federal Aviation Administration pursuant to section 552(b)(3)(B) of [title 5 if the report] title 5—

(1) *if the report*, data, or other information is submitted to the Federal Aviation Administration voluntarily and is not required to be submitted to the Administrator under any other provision of law[.]; or

(2) *if the report, data, or other information is submitted to the Federal Aviation Administration pursuant to section 2(d) of the Aircraft Certification Reform and Accountability Act.*

(b) **APPLICABILITY.**—The limitation established by subsection (a) shall apply to the following:

(1) Reports, data, or other information developed under the Aviation Safety Action Program.

(2) Reports, data, or other information produced or collected under the Flight Operational Quality Assurance Program.

(3) Reports, data, or other information developed under the Line Operations Safety Audit Program.

(4) Reports, data, or other information produced or collected for purposes of developing and implementing a safety management system acceptable to the Administrator.

(5) Reports, analyses, and directed studies, based in whole or in part on reports, data, or other information described in paragraphs (1) through (4), including those prepared under the Aviation Safety Information Analysis and Sharing Program (or any successor program).

(c) **EXCEPTION FOR DE-IDENTIFIED INFORMATION.**—

(1) **IN GENERAL.**—The limitation established by subsection (a) shall not apply to a report, data, or other information if the information contained in the report, data, or other information has been de-identified.

(2) **DE-IDENTIFIED DEFINED.**—In this subsection, the term “de-identified” means the process by which all information that is likely to establish the identity of the specific persons or entities submitting reports, data, or other information is removed from the reports, data, or other information.

#### **§ 44736. Organization designation authorizations**

(a) **DELEGATIONS OF FUNCTIONS.**—

(1) **IN GENERAL.**—Except as provided in paragraph (3), when overseeing an ODA holder, the Administrator of the FAA shall—

(A) require, based on an application submitted by the ODA holder and approved by the Administrator (or the Administrator’s designee), a procedures manual that addresses all procedures and limitations regarding the functions to be performed by the ODA holder~~[(; and~~

~~[(B) delegate fully to the ODA holder each of the functions to be performed as specified in the procedures manual, unless the Administrator determines, after the date of the delegation and as a result of an inspection or other investigation, that the public interest and safety of air commerce requires a limitation with respect to 1 or more of the functions;]~~

~~[(C)] (B) conduct regular oversight activities by inspecting the ODA holder’s delegated functions and taking action based on validated inspection findings[; and].~~

~~[(D) for each function that is limited under subparagraph (B), work with the ODA holder to develop the ODA holder’s capability to execute that function safely and effectively and return to full authority status.]~~

(2) **DUTIES OF ODA HOLDERS.**—An ODA holder shall—

(A) perform each specified function delegated to the ODA holder in accordance with the approved procedures manual for the delegation;

(B) make the procedures manual available to each member of the appropriate ODA unit; and

(C) cooperate fully with oversight activities conducted by the Administrator in connection with the delegation.

(3) EXISTING ODA HOLDERS.—With regard to an ODA holder operating under a procedures manual approved by the Administrator before the date of enactment of the FAA Reauthorization Act of 2018, the Administrator shall—

[(A) at the request of the ODA holder and in an expeditious manner, approve revisions to the ODA holder’s procedures manual;

[(B) delegate fully to the ODA holder each of the functions to be performed as specified in the procedures manual, unless the Administrator determines, after the date of the delegation and as a result of an inspection or other investigation, that the public interest and safety of air commerce requires a limitation with respect to one or more of the functions;

[(C) conduct regular oversight activities by inspecting the ODA holder’s delegated functions and taking action based on validated inspection findings; and

[(D) for each function that is limited under subparagraph (B), work with the ODA holder to develop the ODA holder’s capability to execute that function safely and effectively and return to full authority status.] *shall conduct regular oversight activities by inspecting the ODA holder’s delegated functions and taking action based on validated inspection findings.*

(b) ODA OFFICE.—

(1) ESTABLISHMENT.—Not later than 120 days after the date of enactment of this section, the Administrator of the FAA shall identify, within the FAA Office of Aviation Safety, a centralized policy office to be known as the Organization Designation Authorization Office or the ODA Office.

(2) PURPOSE.—The purpose of the ODA Office shall be to provide oversight and ensure the consistency of the FAA’s audit functions under the ODA program across the FAA.

(3) FUNCTIONS.—The ODA Office shall—

(A) [(i) at the request of an ODA holder, eliminate all limitations specified in a procedures manual in place on the day before the date of enactment of the FAA Reauthorization Act of 2018 that are low and medium risk as determined by a risk analysis using criteria established by the ODA Office and disclosed to the ODA holder, except where an ODA holder’s performance warrants the retention of a specific limitation due to documented concerns about inadequate current performance in carrying out that authorized function;]

[(ii) (i) require, as appropriate, an ODA holder to establish a corrective action plan to regain authority for any retained limitations;

[(iii)] (ii) require, *as appropriate*, an ODA holder to notify the ODA Office when all corrective actions have been accomplished; and

[(iv)] (iii) *when appropriate*, make a reassessment to determine if subsequent performance in carrying out any retained limitation warrants continued retention and, if such reassessment determines performance meets objectives, lift such limitation immediately;

[(B)] improve FAA and ODA holder performance and ensure full utilization of the authorities delegated under the ODA program;]

[(C)] (B) develop a more consistent approach to audit priorities, procedures, and training under the ODA program;

[(D)] (C) review, in a timely fashion, a random sample of limitations on delegated authorities under the ODA program to determine if the limitations are appropriate[;]; and

[(E)] (D) ensure national consistency in the interpretation and application of the requirements of the ODA program, including any limitations, and in the performance of the ODA program[; and].

[(F)] (E) at the request of an ODA holder, review and, *when appropriate*, approve new limitations to ODA functions.

(c) *PERIODIC REVIEWS.*—

(1) *IN GENERAL.*—*Not less than once every 7 years, the Administrator shall conduct a comprehensive review of the capability of each ODA holder for the design of an aircraft, aircraft engine, propeller, or appliance pursuant to a delegation by the Administrator under section 44702(d) to meet the requirements of subpart D of part 183 of title 14, Code of Federal Regulations, based on the holder's organizational structures, requirements applicable to officers and employees, and safety culture.*

(2) *CONTENTS OF REVIEW.*—*A comprehensive review under this subsection shall include an assessment of the effectiveness of, and organization-wide adherence to, an ODA holder's procedures manual and voluntary safety reporting system.*

[(c)] (d) *DEFINITIONS.*—In this section, the following definitions apply:

(1) *FAA.*—The term “FAA” means the Federal Aviation Administration.

(2) *ODA HOLDER.*—The term “ODA holder” means an entity authorized to perform functions pursuant to a delegation made by the Administrator of the FAA under section 44702(d).

(3) *ODA UNIT.*—The term “ODA unit” means a group of 2 or more individuals who perform, under the supervision of an ODA holder, authorized functions under an ODA.

(4) *ORGANIZATION.*—The term “organization” means a firm, partnership, corporation, company, association, joint-stock association, or governmental entity.

(5) *ORGANIZATION DESIGNATION AUTHORIZATION; ODA.*—The term “Organization Designation Authorization” or “ODA” means an authorization by the FAA under section 44702(d) for

an organization composed of 1 or more ODA units to perform approved functions on behalf of the FAA.

\* \* \* \* \*

**§ [44737.] 44740. Special rule for certain aircraft operations[.]**

(a) IN GENERAL.—The operator of an aircraft with a special airworthiness certification in the experimental category may—

(1) operate the aircraft for the purpose of conducting a space support vehicle flight (as that term is defined in [chapter] *section* 50902 of title 51); and

(2) conduct such flight under such certificate carrying persons or property for compensation or hire—

(A) notwithstanding any rule or term of a certificate issued by the Administrator of the Federal Aviation Administration that would prohibit flight for compensation or hire; or

(B) without obtaining a certificate issued by the Administrator to conduct air carrier or commercial operations.

(b) LIMITED APPLICABILITY.—Subsection (a) shall apply only to a space support vehicle flight that satisfies each of the following:

(1) **[(1)]** The aircraft conducting the space support vehicle flight—

(A) takes flight and lands at a single site that is operated by an entity licensed for operation under chapter 509 of title 51;

(B) is owned or operated by a launch or reentry vehicle operator licensed under chapter 509 of title 51, or on behalf of a launch or reentry vehicle operator licensed under chapter 509 of title 51;

(C) is a launch vehicle, a reentry vehicle, or a component of a launch or reentry vehicle licensed for operations pursuant to chapter 509 of title 51; and

(D) is used only to simulate space flight conditions in support of—

(i) training for potential space flight participants, government astronauts, or crew (as those terms are defined in chapter 509 of title 51);

(ii) the testing of hardware to be used in space flight; or

(iii) research and development tasks, which require the unique capabilities of the aircraft conducting the flight.

(c) RULES OF CONSTRUCTION.—

(1) SPACE SUPPORT VEHICLES.—Section 44711(a)(1) shall not apply to a person conducting a space support vehicle flight under this section only to the extent that a term of the experimental certificate under which the person is operating the space support vehicle prohibits the carriage of persons or property for compensation or hire.

(2) AUTHORITY OF ADMINISTRATOR.—Nothing in this section shall be construed to limit the authority of the Administrator of the Federal Aviation Administration to exempt a person from a regulatory prohibition on the carriage of persons or



property for compensation or hire subject to terms and conditions other than those described in this section.

**§44741. Approval of organization designation authorization unit members**

(a) *IN GENERAL.*—Beginning on the date that is 1 year after the date of enactment of the Aircraft Certification Reform and Accountability Act, each individual who is selected on or after such date to become a member of an ODA unit by an ODA holder engaged in the design of an aircraft, aircraft engine, propeller, or appliance and performs an authorized function pursuant to a delegation by the Administrator of the Federal Aviation Administration under section 44702(d)—

(1) shall be an employee, a contractor, or the employee of a supplier of the ODA holder; and

(2) may not become a member of such unit unless approved by the Administrator pursuant to this section.

(b) *PROCESS AND TIMELINE.*—

(1) *IN GENERAL.*—The Administrator shall maintain an efficient process for the review and approval of an individual to become a member of an ODA unit under this section.

(2) *PROCESS.*—An ODA holder described in subsection (a) may submit to the Administrator an application for an individual to be approved to become a member of an ODA unit under this section. The application shall be submitted in such form and manner as the Administrator determines appropriate. The Administrator shall require an ODA holder to submit with such an application information sufficient to demonstrate an individual's qualifications under subsection (c).

(3) *TIMELINE.*—The Administrator shall approve or reject an individual that is selected by an ODA holder to become an ODA unit member under this section not later than 30 days after the receipt of an application by an ODA holder.

(4) *DOCUMENTATION OF APPROVAL.*—Upon approval of an individual to become a member of an ODA unit under this section, the Administrator shall provide such individual a letter confirming that such individual has been approved by the Administrator under this section to be an ODA unit member.

(5) *REAPPLICATION.*—An ODA holder may submit an application under this subsection for an individual to become a member of an ODA unit under this section regardless of whether an application for such individual was previously rejected by the Administrator.

(c) *QUALIFICATIONS.*—

(1) *IN GENERAL.*—The Administrator shall issue minimum qualifications for an individual to become a member of an ODA unit under this section. In issuing such qualifications, the Administrator shall consider existing qualifications for Administration employees with similar duties and whether such individual—

(A) is technically proficient and qualified to perform the authorized functions sought;

(B) has no recent record of serious enforcement action, as determined by the Administrator, taken by the Adminis-

trator with respect to any certificate, approval, or authorization held by such individual;

(C) is of good moral character (as such qualification is applied to an applicant for an airline transport pilot certificate issued under section 44703);

(D) possesses the knowledge of applicable design or production requirements in this chapter and in title 14, Code of Federal Regulations, necessary for performance of the authorized functions sought;

(E) possesses a high degree of knowledge of applicable design or production principles, system safety principles, or safety risk management processes appropriate for the authorized functions sought; and

(F) meets such testing, examination, training, or other qualification standards as the Administrator determines are necessary to ensure the individual is competent and capable of performing the authorized functions sought.

(2) **PREVIOUSLY REJECTED APPLICATION.**—In reviewing an application for an individual to become a member of an ODA unit under this section, if an application for such individual was previously rejected, the Administrator shall ensure that the reasons for the prior rejection have been resolved or mitigated to the Administrator's satisfaction before making a determination on the individual's reapplication.

(d) **RESCISSION OF APPROVAL.**—The Administrator may rescind an approval of an individual as a member of an ODA unit granted pursuant to this section at any time and for any reason the Administrator considers appropriate. The Administrator shall develop procedures to provide for notice and opportunity to appeal rescission decisions made by the Administrator. Such decisions by the Administrator are not subject to judicial review.

(e) **RECORDS AND BRIEFINGS.**—

(1) **IN GENERAL.**—Beginning on the date described in subsection (a), an ODA holder shall maintain, for a period to be determined by the Administrator and with proper protections to ensure the security of sensitive and personal information—

(A) any data, applications, records, or manuals required by the ODA holder's approved procedures manual, as determined by the Administrator;

(B) the names, responsibilities, qualifications, and example signature of each member of the ODA unit who performs an authorized function pursuant to a delegation by the Administrator under section 44702(d);

(C) training records for ODA unit members and ODA administrators; and

(D) any other data, applications, records, or manuals determined appropriate by the Administrator.

(2) **CONGRESSIONAL BRIEFING.**—Not later than 90 days after the date of enactment of the Aircraft Certification Reform and Accountability Act, and every 90 days thereafter through September 30, 2023, the Administrator shall provide to the Committee on Transportation and Infrastructure of the House of Representatives and Committee on Commerce, Science, and Transportation of the Senate a briefing on the implementation and effects of this section, including—

(A) *the Administration's performance in completing reviews of individuals and approving or denying such individuals within the timeline required under subsection (b)(3);*

(B) *for any individual rejected by the Administrator under subsection (b) during the preceding 90-day period, the reasoning or basis for such rejection; and*

(C) *any resource, staffing, or other challenges within the Administration associated with implementation of this section.*

(f) *SPECIAL REVIEW OF QUALIFICATIONS.—*

(1) *IN GENERAL.—Not later than 30 days after the issuance of minimum qualifications under subsection (c), the Administrator shall initiate a review of the qualifications of each individual who on the date on which such minimum qualifications are issued is a member of an ODA unit of a holder of a type certificate for a transport airplane to ensure such individual meets the minimum qualifications issued by the Administrator under subsection (c).*

(2) *UNQUALIFIED INDIVIDUAL.—For any individual who is determined by the Administrator not to meet such minimum qualifications pursuant to the review conducted under paragraph (1), the Administrator—*

(A) *shall determine whether the lack of qualification may be remedied and, if so, provide such individual with an action plan or schedule for such individual to meet such qualifications; or*

(B) *may, if the Administrator determines the lack of qualification may not be remedied, take appropriate action, including prohibiting such individual from performing an authorized function.*

(3) *DEADLINE.—*

(A) *The Administrator shall complete the review required under paragraph (1) not later than 18 months after the date on which such review was initiated.*

(B) *If the Administrator fails to complete the review in compliance with subparagraph (A), the Secretary of Transportation shall assume the responsibility for completing the review.*

(C) *The Secretary's completion of the review under subparagraph (B)—*

(i) *may not be delegated to the Administration; and*

(ii) *shall be completed within 120 days of the date the Secretary's assumption of responsibility following the Administrator's failure to complete the review in compliance with subparagraph (A).*

(4) *SAVINGS CLAUSE.—An individual approved to become a member of an ODA unit of a holder of a type certificate for a transport airplane under subsection (a) shall not be subject to the review under this subsection.*

(g) *PROHIBITION.—The Administrator may not authorize an organization or ODA holder to approve an individual selected by an ODA holder to become an ODA unit member under this section.*

(h) *DEFINITIONS.—*

(1) *GENERAL APPLICABILITY.*—The definitions contained in section 44736 shall apply to this section.

(2) *TRANSPORT AIRPLANE.*—The term “transport airplane” means a transport-category airplane designed for operation by an air carrier or foreign air carrier type-certificated with a passenger seating capacity of 30 or more or an all-cargo or combi derivative of such an airplane.

(i) *AUTHORIZATION OF APPROPRIATIONS.*—There is authorized to be appropriated to carry out this section \$3,000,000 for each of fiscal years 2021 through 2023.

**§ 44742. Interference with the duties of organization designation authorization unit members**

(a) *IN GENERAL.*—The Administrator of the Federal Aviation Administration shall continuously seek to eliminate or minimize interference by an ODA holder that affects the performance of authorized functions by members of an ODA unit.

(b) *PROHIBITION.*—

(1) *IN GENERAL.*—It shall be unlawful for any individual who is employed by an ODA holder to commit an act of interference with an ODA unit member’s performance of authorized functions.

(2) *CIVIL PENALTY.*—

(A) *INDIVIDUALS.*—An individual shall be subject to a civil penalty under section 46301(a)(1) for each violation under paragraph (1).

(B) *SAVINGS CLAUSE.*—Nothing in this paragraph shall be construed as limiting or constricting any other authority of the Administrator to pursue an enforcement action against an individual or organization for violation of applicable Federal laws or regulations of the Administration.

(c) *REPORTING.*—

(1) *REPORTS TO ODA HOLDER.*—A member of an ODA unit shall promptly report any instances of interference experienced or witnessed by such member to the office of the ODA holder that is designated to receive such reports.

(2) *REPORTS TO THE FAA.*—

(A) *IN GENERAL.*—The ODA holder office described in paragraph (1) shall submit to the office of the Administration designated by the Administrator to accept and review such reports any credible instances of interference reported under paragraph (1).

(B) *CONTENTS.*—A report to the Administration under this paragraph shall be submitted in a manner, at a time, and in a form prescribed by the Administrator. Such report shall include the results of any investigation conducted by the ODA holder in response to a report of interference, a description of any action taken by the ODA holder as a result of the report of interference, and any other information or potentially mitigating factors the ODA holder or the Administrator deems appropriate.

(C) *USE OF REPORT.*—The Administrator may use the information submitted in a report under this paragraph, including the actions taken by an ODA holder in response to a report under paragraph (1), in determining whether to

issue a civil penalty pursuant to subsection (b) or whether such civil penalty should be subject to a setoff or compromised.

(3) *RULE OF CONSTRUCTION.*—Nothing in this subsection shall be construed to preclude a member of an ODA unit from reporting an instance of interference reported under paragraph (1) directly to the Administration. Each ODA holder shall provide notice to each member of such holder's ODA unit stating that such individual may report an instance of interference reported under paragraph (1) directly to the Administration.

(d) *DEFINITIONS.*—

(1) *GENERAL APPLICABILITY.*—The definitions contained in section 44736 shall apply to this section.

(2) *INTERFERENCE.*—In this section, the term “interference” means—

(A) blatant or egregious statements or behavior, such as harassment, beratement, or threats, that a reasonable person would conclude was intended to improperly influence or prejudice an ODA unit member's performance of his or her duties; or

(B) the presence of non-ODA unit duties or activities that conflict with the performance of authorized functions by ODA unit members.

#### **§ 44743. Pilot training requirements**

(a) *IN GENERAL.*—

(1) *ADMINISTRATOR'S DETERMINATION.*—In establishing any pilot training requirements with respect to a new transport airplane, the Administrator of the Federal Aviation Administration shall independently review any proposal by the manufacturer of such airplane with respect to the scope, format, or minimum level of training required for operation of such airplane.

(2) *ASSURANCES AND MARKETING REPRESENTATIONS.*—Before the Administrator has established applicable training requirements, an applicant for a new or amended type certificate for an airplane described in paragraph (1) may not, with respect to the scope, format, or magnitude of pilot training for such airplane—

(A) make any assurance, whether verbal or in writing, to a potential purchaser of such airplane unless a clear and conspicuous disclaimer (as defined by the Administrator) is included regarding the status of training required for operation of such airplane; or

(B) provide financial incentives (including rebates) to a potential purchaser of such airplane regarding the scope, format, or magnitude of pilot training for such airplane.

(b) *PILOT RESPONSE TIME.*—Beginning on the day after the date on which regulations are issued under section 20(b)(5) of the Aircraft Certification Reform and Accountability Act, the Administrator may not issue a new or amended type certificate for an airplane described in subsection (a) unless the applicant for such certificate has demonstrated to the Administrator that the applicant has accounted for realistic assumptions regarding the time for pilot responses to non-normal conditions in designing the systems and instrumentation of such airplane. Such assumptions shall—

(1) *be based on test data, analysis, or other technical validation methods; and*

(2) *account for generally accepted scientific consensus among experts in human factors regarding realistic pilot response time.*

(c) *DEFINITION.—In this section, the term “transport airplane” means a transport-category airplane designed for operation by an air carrier or foreign air carrier type-certificated with a passenger seating capacity of 30 or more or an all-cargo or combi derivative of such an airplane.*

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## SUBPART IV—ENFORCEMENT AND PENALTIES

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### CHAPTER 463—PENALTIES

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#### § 46301. Civil penalties

(a) GENERAL PENALTY.—(1) A person is liable to the United States Government for a civil penalty of not more than \$25,000 (or \$1,100 if the person is an individual or small business concern) for violating—

(A) chapter 401 (except sections 40103(a) and (d), 40105, 40116, and 40117), chapter 411, chapter 413 (except sections 41307 and 41310(b)–(f)), chapter 415 (except sections 41502, 41505, and 41507–41509), chapter 417 (except sections 41703, 41704, 41710, 41713, and 41714), chapter 419, subchapter II or III of chapter 421, chapter 423, chapter 441 (except section 44109), section 44502(b) or (c), chapter 447 [(except sections 44717 and 44719–44723)] *(except sections 44704(a)(6), 44704(e)(4), 44717, and 44719–44723)*, chapter 448, chapter 449 (except sections 44902, 44903(d), 44904, 44907(a)–(d)(1)(A) and (d)(1)(C)–(f), and 44908), chapter 451, section 47107(b) (including any assurance made under such section), or section 47133 of this title;

(B) a regulation prescribed or order issued under any provision to which clause (A) of this paragraph applies;

(C) any term of a certificate or permit issued under section 41102, 41103, or 41302 of this title; or

(D) a regulation of the United States Postal Service under this part.

(2) A separate violation occurs under this subsection for each day the violation (other than a violation of section 41719) continues or, if applicable, for each flight involving the violation (other than a violation of section 41719).

(3) PENALTY FOR DIVERSION OF AVIATION REVENUES.—The amount of a civil penalty assessed under this section for a violation of section 47107(b) of this title (or any assurance made under such section) or section 47133 of this title may be increased above the otherwise applicable maximum amount under this section to an amount not to exceed 3 times the amount of revenues that are used in violation of such section.

(4) AVIATION SECURITY VIOLATIONS.—Notwithstanding paragraph (1) of this subsection, the maximum civil penalty for violating chapter 449 shall be \$10,000; except that the maximum civil penalty shall be \$25,000 in the case of a person operating an aircraft for the transportation of passengers or property for compensation (except an individual serving as an airman).

(5) PENALTIES APPLICABLE TO INDIVIDUALS AND SMALL BUSINESS CONCERNS.—

(A) An individual (except an airman serving as an airman) or small business concern is liable to the Government for a civil penalty of not more than \$10,000 for violating—

(i) chapter 401 (except sections 40103(a) and (d), 40105, 40106(b), 40116, and 40117), section 44502 (b) or (c), chapter 447 [(except sections 44717–44723)] *(except sections 44704(a)(6), 44704(e)(4), and 44717–44723)*, chapter 448, chapter 449 (except sections 44902, 44903(d), 44904, and 44907–44909), chapter 451, or section 46314(a) of this title; or

(ii) a regulation prescribed or order issued under any provision to which clause (i) applies.

(B) A civil penalty of not more than \$10,000 may be imposed for each violation under paragraph (1) committed by an individual or small business concern related to—

(i) the transportation of hazardous material;

(ii) the registration or recordation under chapter 441 of an aircraft not used to provide air transportation;

(iii) a violation of section 44718(d), relating to the limitation on construction or establishment of landfills;

(iv) a violation of section 44725, relating to the safe disposal of life-limited aircraft parts; or

(v) a violation of section 40127 or section 41705, relating to discrimination.

(C) Notwithstanding paragraph (1), the maximum civil penalty for a violation of section 41719 committed by an individual or small business concern shall be \$5,000 instead of \$1,000.

(D) Notwithstanding paragraph (1), the maximum civil penalty for a violation of section 41712 (including a regulation prescribed or order issued under such section) or any other regulation prescribed by the Secretary of Transportation by an individual or small business concern that is intended to afford consumer protection to commercial air transportation passengers shall be \$2,500 for each violation.

(6) FAILURE TO COLLECT AIRPORT SECURITY BADGES.—Notwithstanding paragraph (1), any employer (other than a governmental entity or airport operator) who employs an employee to whom an airport security badge or other identifier used to obtain access to a secure area of an airport is issued before, on, or after the date of enactment of this paragraph and who does not collect or make reasonable efforts to collect such badge from the employee on the date that the employment of the employee is terminated and does not notify the operator of the airport of such termination within 24 hours of the date of such termination shall be liable to the Government for a civil penalty not to exceed \$10,000.

(7) PENALTIES RELATING TO HARM TO PASSENGERS WITH DISABILITIES.—

(A) PENALTY FOR BODILY HARM OR DAMAGE TO WHEELCHAIR OR OTHER MOBILITY AID.—The amount of a civil penalty assessed under this section for a violation of section 41705 that involves damage to a passenger's wheelchair or other mobility aid or injury to a passenger with a disability may be increased above the otherwise applicable maximum amount under this section for a violation of section 41705 to an amount not to exceed 3 times the maximum penalty otherwise allowed.

(B) EACH ACT CONSTITUTES SEPARATE OFFENSE.—Notwithstanding paragraph (2), a separate violation of section 41705 occurs for each act of discrimination prohibited by that section.

(b) SMOKE ALARM DEVICE PENALTY.—(1) A passenger may not tamper with, disable, or destroy a smoke alarm device located in a lavatory on an aircraft providing air transportation or intrastate air transportation.

(2) An individual violating this subsection is liable to the Government for a civil penalty of not more than \$2,000.

(c) PROCEDURAL REQUIREMENTS.—(1) The Secretary of Transportation may impose a civil penalty for the following violations only after notice and an opportunity for a hearing:

(A) a violation of subsection (b) of this section or chapter 411, chapter 413 (except sections 41307 and 41310(b)–(f)), chapter 415 (except sections 41502, 41505, and 41507–41509), chapter 417 (except sections 41703, 41704, 41710, 41713, and 41714), chapter 419, subchapter II of chapter 421, chapter 423, or section 44909 of this title.

(B) a violation of a regulation prescribed or order issued under any provision to which clause (A) of this paragraph applies.

(C) a violation of any term of a certificate or permit issued under section 41102, 41103, or 41302 of this title.

(D) a violation under subsection (a)(1) of this section related to the transportation of hazardous material.

(2) The Secretary shall give written notice of the finding of a violation and the civil penalty under paragraph (1) of this subsection.

(d) ADMINISTRATIVE IMPOSITION OF PENALTIES.—(1) In this subsection—

(A) “flight engineer” means an individual who holds a flight engineer certificate issued under part 63 of title 14, Code of Federal Regulations.

(B) “mechanic” means an individual who holds a mechanic certificate issued under part 65 of title 14, Code of Federal Regulations.

(C) “pilot” means an individual who holds a pilot certificate issued under part 61 of title 14, Code of Federal Regulations.

(D) “repairman” means an individual who holds a repairman certificate issued under part 65 of title 14, Code of Federal Regulations.

(2) The Administrator of the Federal Aviation Administration may impose a civil penalty for a violation of chapter 401 (except sections 40103(a) and (d), 40105, 40106(b), 40116, and 40117), chapter 441 (except section 44109), section 44502(b) or (c), chapter 447 [(except sections 44717 and 44719–44723)] (except sections 44704(a)(6), 44704(e)(4), 44717, and 44719–44723), chapter 448, chapter 451, section 46301(b), section 46302 (for a violation relat-



ing to section 46504), section 46318, section 46319, section 46320, or section 47107(b) (as further defined by the Secretary of Transportation under section 47107(k) and including any assurance made under section 47107(b)) of this title or a regulation prescribed or order issued under any of those provisions. The Secretary of Homeland Security may impose a civil penalty for a violation of chapter 449 (except sections 44902, 44903(d), 44907(a)–(d)(1)(A), 44907(d)(1)(C)–(f), 44908, and 44909), section 46302 (except for a violation relating to section 46504), or section 46303 of this title or a regulation prescribed or order issued under any of those provisions. The Secretary of Homeland Security or Administrator of the Federal Aviation Administration shall give written notice of the finding of a violation and the penalty.

(3) In a civil action to collect a civil penalty imposed by the Secretary of Homeland Security or Administrator of the Federal Aviation Administration under this subsection, the issues of liability and the amount of the penalty may not be reexamined.

(4) Notwithstanding paragraph (2) of this subsection, the district courts of the United States have exclusive jurisdiction of a civil action involving a penalty the Secretary of Homeland Security or Administrator of the Federal Aviation Administration initiates if—

(A) the amount in controversy is more than—

(i) \$50,000 if the violation was committed by any person before the date of enactment of the Vision 100—Century of Aviation Reauthorization Act;

(ii) \$400,000 if the violation was committed by a person other than an individual or small business concern on or after that date; or

(iii) \$50,000 if the violation was committed by an individual or small business concern on or after that date;

(B) the action is in rem or another action in rem based on the same violation has been brought;

(C) the action involves an aircraft subject to a lien that has been seized by the Government; or

(D) another action has been brought for an injunction based on the same violation.

(5)(A) The Administrator of the Federal Aviation Administration may issue an order imposing a penalty under this subsection against an individual acting as a pilot, flight engineer, mechanic, or repairman only after advising the individual of the charges or any reason the Administrator of the Federal Aviation Administration relied on for the proposed penalty and providing the individual an opportunity to answer the charges and be heard about why the order shall not be issued.

(B) An individual acting as a pilot, flight engineer, mechanic, or repairman may appeal an order imposing a penalty under this subsection to the National Transportation Safety Board. After notice and an opportunity for a hearing on the record, the Board shall affirm, modify, or reverse the order. The Board may modify a civil penalty imposed to a suspension or revocation of a certificate.

(C) When conducting a hearing under this paragraph, the Board is not bound by findings of fact of the Administrator of the Federal Aviation Administration but is bound by all validly adopted interpretations of laws and regulations the Administrator of the Federal Aviation Administration carries out and of written agency policy

guidance available to the public related to sanctions to be imposed under this section unless the Board finds an interpretation is arbitrary, capricious, or otherwise not according to law.

(D) When an individual files an appeal with the Board under this paragraph, the order of the Administrator of the Federal Aviation Administration is stayed.

(6) An individual substantially affected by an order of the Board under paragraph (5) of this subsection, or the Administrator of the Federal Aviation Administration when the Administrator of the Federal Aviation Administration decides that an order of the Board under paragraph (5) will have a significant adverse impact on carrying out this part, may obtain judicial review of the order under section 46110 of this title. The Administrator of the Federal Aviation Administration shall be made a party to the judicial review proceedings. Findings of fact of the Board are conclusive if supported by substantial evidence.

(7)(A) The Administrator of the Federal Aviation Administration may impose a penalty on a person (except an individual acting as a pilot, flight engineer, mechanic, or repairman) only after notice and an opportunity for a hearing on the record.

(B) In an appeal from a decision of an administrative law judge as the result of a hearing under subparagraph (A) of this paragraph, the Administrator of the Federal Aviation Administration shall consider only whether—

- (i) each finding of fact is supported by a preponderance of reliable, probative, and substantial evidence;
- (ii) each conclusion of law is made according to applicable law, precedent, and public policy; and
- (iii) the judge committed a prejudicial error that supports the appeal.

(C) Except for good cause, a civil action involving a penalty under this paragraph may not be initiated later than 2 years after the violation occurs.

(D) In the case of a violation of section 47107(b) of this title or any assurance made under such section—

- (i) a civil penalty shall not be assessed against an individual;
- (ii) a civil penalty may be compromised as provided under subsection (f); and
- (iii) judicial review of any order assessing a civil penalty may be obtained only pursuant to section 46110 of this title.

(8) The maximum civil penalty the Administrator of the Transportation Security Administration, Administrator of the Federal Aviation Administration, or Board may impose under this subsection is—

- (A) \$50,000 if the violation was committed by any person before the date of enactment of the Vision 100—Century of Aviation Reauthorization Act;
- (B) \$400,000 if the violation was committed by a person other than an individual or small business concern on or after that date; or
- (C) \$50,000 if the violation was committed by an individual or small business concern on or after that date.

(9) This subsection applies only to a violation occurring after August 25, 1992.

(e) **PENALTY CONSIDERATIONS.**—In determining the amount of a civil penalty under subsection (a)(3) of this section related to transportation of hazardous material, the Secretary of Transportation shall consider—

(1) the nature, circumstances, extent, and gravity of the violation;

(2) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue doing business; and

(3) other matters that justice requires.

(f) **COMPROMISE AND SETOFF.**—(1)(A) The Secretary may compromise the amount of a civil penalty imposed for violating—

(i) chapter 401 (except sections 40103(a) and (d), 40105, 40116, and 40117), chapter 441 (except section 44109), section 44502(b) or (c), chapter 447 [(except sections 44717 and 44719–44723)] (*except sections 44704(a)(6), 44704(e)(4), 44717, and 44719–44723*), chapter 448, chapter 449 (except sections 44902, 44903(d), 44904, 44907(a)–(d)(1)(A) and (d)(1)(C)–(f), 44908, and 44909), or chapter 451 of this title; or

(ii) a regulation prescribed or order issued under any provision to which clause (i) of this subparagraph applies.

(B) The Postal Service may compromise the amount of a civil penalty imposed under subsection (a)(1)(D) of this section.

(2) The Government may deduct the amount of a civil penalty imposed or compromised under this subsection from amounts it owes the person liable for the penalty.

(g) **JUDICIAL REVIEW.**—An order of the Secretary or the Administrator of the Federal Aviation Administration imposing a civil penalty may be reviewed judicially only under section 46110 of this title.

(h) **NONAPPLICATION.**—(1) This section does not apply to the following when performing official duties:

(A) a member of the armed forces of the United States.

(B) a civilian employee of the Department of Defense subject to the Uniform Code of Military Justice.

(2) The appropriate military authority is responsible for taking necessary disciplinary action and submitting to the Secretary (or the Administrator of the Transportation Security Administration with respect to security duties and powers designated to be carried out by the Administrator of the Transportation Security Administration or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator of the Federal Aviation Administration) a timely report on action taken.

(i) **SMALL BUSINESS CONCERN DEFINED.**—In this section, the term “small business concern” has the meaning given that term in section 3 of the Small Business Act (15 U.S.C. 632).

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